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GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WASHINGTON, D.C. 20005

(202) 408-7100

FACSIMILE: (202) 289-1504

WRITER'S DIRECT DIAL NUMBER

SUSAN H.R. JONES*

(202) 408-7108

**Admitted in New Jersey only*

CHICAGO, ILLINOIS

July 10, 1995

Via Courier

Mr. William Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Reply Comments in MM Docket No. 95-42

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Dear Mr. Caton:

Transmitted herewith, on behalf of A.C. Nielsen Company, are Reply Comments for consideration in the Notice of Proposed Rule Making, In the Matter of Digital Data Transmissions Within the Video Portion of Television Broadcast Station Transmissions, MM Docket No. 95-42.

Should any questions arise related to this matter, kindly contact the undersigned counsel at the direct line noted above, or Grier C. Raclin at (202) 408-7160.

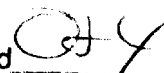
Sincerely,



Susan H.R. Jones

Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Digital Data Transmission Within) MM Docket No. 95-42
the Video Portion of Television)
Broadcast Station Transmissions)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TO: The Commission

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REPLY COMMENTS
OF
A.C. NIELSEN COMPANY

A.C. Nielsen ("Nielsen"), through its attorneys, hereby provides its *Reply Comments* to some of the issues raised in *Comments* filed with the Federal Communications Commission ("FCC" or "Commission") on June 23, 1995, in response to the *Commission's Notice of Proposed Rule Making* ("NPRM" or "Notice") in the above-referenced proceeding.

I. As set forth in its *Comments* filed in this proceeding, Nielsen provides "rating" or audience measurement services, which estimate the size and demographic composition of television and cable audiences, to members of the broadcast television, advertising and cable industries. To prepare these ratings, Nielsen transmits "Source Identification" or "SID" codes on Lines 20 and 22 of broadcast signals.^{1/} In its *Comments*, Nielsen urged the Commission: (i) to continue to authorize the use of Line 22 for data transmission purposes, at least in connection with the preparation of ratings;^{2/} (ii) to reject calls to "standardize" data transmission systems, and

^{1/} Nielsen *Comments* at 2-3.

^{2/} Nielsen also requested the Commission, if it deemed prior authorization was required, to grant Nielsen's long-pending Request for Permissive Authority to transmit data on Line 22 of the Broadcast Signal.

instead impose, as a condition to authorization, a requirement that data transmissions neither degrade nor interfere with main channel broadcast programming; and (iii) formally adopt its current *de facto* policy of allowing broadcasters to transmit digital data without prior Commission authorization so long as the transmissions do not degrade the broadcaster's main channel programming.

2. **Line 22 Authorizations.** None of the Comments filed in this proceeding supported the Commission's suggestion that authorizations to use Line 22 to transmit data be "phased out." See *NPRM* at ¶ 30. In fact, virtually every Commenter who addressed this issue supported the continued authorization of digital data transmission on Line 22.^{3/} In its *Comments*, COMSAT Corporation ("COMSAT"), like Nielsen, noted that subvideo transmission systems can raise difficult problems for compression methodologies.^{4/} Although two Commenters speculated that the use of Line 22 might interfere with closed captioned transmitting on Line 21, or become visible in certain circumstances,^{5/} the Commenters failed to provide any support for their speculations. Nielsen respectfully reasserts that over 26 years of Nielsen's use of Line 20, and 6 years of Nielsen's use of Line 22 have failed to reveal a *single instance* of interference being caused to the same or adjacent line users. Of those two Commenters, one suggested that Line 22 data

^{3/} See, *inter alia*, Digideck Incorporated ("Digideck"), *Comments* at 2, where the Commission is urged to continue to permit digital data transmissions because "such activity should be encouraged and recognized as vital to the competitiveness of the television industry;" Yes! Entertainment ("Yes! Entertainment") *Comments*, at 5, "[T]here appears to be no justification for 'phasing out' . . . an innovative technology that creates no 'discernible degradation;'" National Association of Broadcasters ("NAB") *Comments*, at 7, "To the extent that it is already allowed, we are not opposed to the Commission issuing regulations in regard to the use of line 22;" Maximum Service Television, Inc. ("MSTV") *Comments*, at 2, "Given the current shortage of spectrum . . . the Commission should encourage the development and deployment of communications systems that make more intensive use of available spectrum."

^{4/} COMSAT *Comments*, at 2.

^{5/} Zenith Electronics Corporation ("Zenith") *Comments*, at 1; WGBH Educational Foundation *Comments*, at 2.

transmissions might degrade the visible picture in newly developing wall projection televisions.^{6/}

Such speculation, even if accurate, would be irrelevant if the Commission were to adopt the simple "no degradation" rule proposed by Nielsen. Simply, if data transmissions in the active video signal were to cause interference to adjacent line users, or become visible to consumers in the normal course of television viewing, the authorization to provide such transmissions would have to cease.

3. In short, there is no supported rationale for "phasing out" Nielsen's Line 22 authorization. Thus far, there are only unsupported speculations that line 22 transmission might interfere or become visible or otherwise "degrade" main channel programming. On the other hand, there is uncontraverted evidence that such a "phasing out" would greatly undermine Nielsen's ability to produce the ratings relied upon by the broadcast, cable and advertising industries. In these circumstances, the Commission must continue to authorize Nielsen's use of Line 22, either by granting Nielsen's 1990 *Request for Permanent Authority*, or by deciding that such prior approval is no longer required in light of the fact that Nielsen's Line 22 transmissions do not "degrade" the television signal (*See text, infra.*).

4. **Standardization.** In its *Comments*, Nielsen urged the Commission to refrain from imposing industry-wide technical standards for use of Line 22 because there is no established need to support the government's entanglement in the developing marketplace in such a fashion. Further, Nielsen argued that the adoption of standards would inhibit the development of new data transmission systems that cannot be foreseen at the time the "standard"

^{6/} Zenith *Comments*, at 2. Nielsen asserts, to the contrary, that wall projection technology, as with other newly developing viewing technologies, will follow similar methods of masking discernible artifacts in the active video, such as those artifacts introduced by consumer VCRs, gated-sync scrambling systems, and errant time-based correctors. The majority of personal computer television receiver card manufacturers have chosen to crop over-scan areas to hide these and other artifacts. Accordingly, Nielsen proposes that the active video in wall projection technologies will not be degraded by Line 22 data transmissions.

is adopted.^{7/} In the alternative, Nielsen urged the Commission to ensure that data transmissions in the active video signal not degrade the primary broadcast by conditioning the use of Line 22 upon the requirement that the data transmission not be visible to consumers when viewing their television receivers in the normal course.^{8/}

5. Although Nielsen remains opposed to industry-wide standards of any sort as unnecessary and inhibiting to technological developments, Nielsen's opposition is most pointed with regard to standards potentially applicable to data transmissions, like Nielsen's SID Codes, which are *not* intended for general distribution to the public, or that are designated for only a proprietary business purpose. As long as non-public data transmissions are not visible to consumers and do not otherwise adversely affect main channel programming in the normal course of television viewing, the public would remain wholly unaffected by the transmission. The Commission thus has no interest in imposing standards in this context. This opposition to the adoption of standards applicable to non-public transmission was endorsed in this proceeding by several parties in this proceeding.^{9/}

6. A review of the other *Comments* filed in this proceeding, and the varied ways in which Line 22 is currently being used, or proposed to be used, supports Nielsen's position that the current authorization process, unencumbered by technical or operational "standards," adequately protects against unacceptable interference and encourages creative uses of the spectrum and the development of more efficient transmission systems that better satisfy the

^{7/} Nielsen *Comments* at ¶¶ 25-27.

^{8/} *Id.* at ¶ 24.

^{9/} National Association of Broadcasters ("NAB") *Comments* at 4; The Consumer Electronics Group of the Electronic Industry Association ("EIA") *Comments* at 3; EIA/NAB *Joint Comments* at 2.

public's needs and tastes. Digideck, for example, proposes to use Line 22 as an "inexpensive means of transmitting vast amounts of data to mass audiences;"^{10/} Yes! Entertainment markets a children's toy that responds by voice at periodic intervals during the story line of children's programs and is activated by encoding a signal in the "over scan" portion of the television signal;^{11/} WavePhore, Inc. ("WavePhore"), has developed high-speed data transmission methods that include software and applications packaging for integrated audio and video operations.^{12/} Nielsen uses or proposes a very different data transmission system. Each of these varied proposals are directed at serving very different, but not mutually incompatible, needs within the marketplace -- each with different technology. Nonetheless, there has not been one scintilla of support for any speculation that the use, or even the *concurrent* use of these (or these in addition to other) transmission systems will in any way "degrade" or otherwise adversely affect broadcast programming in which the related codes are inserted

7. On the other hand, it is clear that adoption of one of these (or any other individual) transmission methodologies as the "standard" will *inhibit*, and probably *prohibit*, the development of new, innovative and as-yet unforeseen technologies that do not fit neatly into one of the current systems' technical parameters. Under the present "unstandardized" system, the Commission has created an environment where creativity has flourished, and where mutually exclusive interference is, at most, an unsupported speculation. Nielsen respectfully suggests that such a system deserves continuation until *actual* flaws are revealed, and that the Commission refuse to interfere in the marketplace by attempting to "standardize" future innovations. If the

^{10/} Digideck *Comments*, at 2.

^{11/} Yes! Entertainment *Comments*, at 3.

^{12/} WavePhore *Comments* at 2-3.

Commission is concerned that a continued *ad hoc* system will raise an unacceptable risk of mutually unacceptable interference, the adoption of the simple "no degradation" rule proposed by Nielsen will address such problems without the need for the government to become inappropriately enmeshed in the commercial marketplace.

8. **Prior Authorization Requirements.** Virtually all Commenters to this proceeding supported, or declined to oppose, the Commission's proposal that it not require prior Commission approval for broadcasters to transmit data in their active video signals. Those commentators addressing the issue directly, articulated similar arguments to those posed by Nielsen; *i.e.*, that prior FCC authorization is an unnecessary, costly and time-consuming process for both the broadcaster and (if applicable) a third-party provider of data transmissions, particularly where there is no apparent harm of interference to the main video broadcast. The National Association of Broadcasters ("NAB") stated, for example, that prior FCC approval is unnecessary provided that the ancillary transmissions cause no harmful interference;^{13/} En Technology Corporation ("En") noted that delay caused by requiring FCC approval would unnecessarily withhold a valuable product from the commercial marketplace.^{14/}

9. Nielsen supports the continuation of the Commission's current *de facto* policy which does not require prior FCC approval for ancillary transmissions that do not degrade main channel programming. Similar to En and NAB, Nielsen respectfully asserts that prior approval is both unnecessary where no degradation to the active video picture is apparent, and thus needlessly time-consuming and costly.

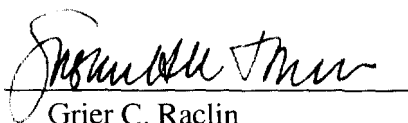
^{13/} NAB *Comments*, at 6.

^{14/} Accordingly, En urges the Commission to "confirm . . . [that] licensees and consumers can take advantage of the tremendous benefits of En's system without obtaining prior FCC consent." See En's *Comments* at 3.

WHEREFORE, Nielsen urges the Commission to adopt regulations in accordance with the opinions and arguments expressed in Nielsen's *Comments* and in these *Reply Comments*.

Respectfully submitted,

A.C. NIELSEN COMPANY

By: 

Grier C. Raclin
Susan H.R. Jones
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
Tel.# (202) 408-7100

Its Attorneys

Dated: July 10, 1995

CERTIFICATE OF SERVICE

I, Kimberly A. Dunmire, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 10th day of July, 1995, caused to be sent by first class mail, a copy of the foregoing REPLY COMMENTS OF A.C. NIELSEN COMPANY to the following:

Chairman Reed Hundt
Stop Code 0101
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Stop Code 0103
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Commissioner Rachelle Chong
Stop Code 0105
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner James H. Quello
Stop Code 0106
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Susan Ness
Stop Code 0104
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Roy J. Stewart
Chief, Mass Media Bureau
Stop Code 1800
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

William H. Hassinger
Assistant Chief (Engr.), Mass Media Bureau
Stop Code 1800
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Robert H. Ratcliffe
Assistant Chief (Law), Mass Media Bureau
Stop Code 1800
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Barbara A. Kreisman
Chief, Video Services Division
Stop Code 1800E
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

Gordon W. Godfrey
Engineering Policy Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M St., N.W.
Room 566
Washington, D.C. 20554

David Bennett
Stop Code 1800E1
Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

VIA HAND DELIVERY

Lynn D. Claudy
Sr. Vice President, Science & Technology
Kelly Williams
Director of Engineering
National Association of Broadcasters
1771 N St., N.W.
Washington, D.C. 20036

Allen B. Conner, Jr.
President & CEO
Digideck, Incorporated
535 Middlefield Road
Suite 200
Menlo Park, CA 94025

Larry Goldberg
Director of Access Technologies
WGBH Educational Foundation
125 Western Ave.
Boston, MA 02134

Victor Tawail
Vice President
Association for Maximum Service
Television, Inc.
1776 Massachusetts Ave., N.W.
Suite 310
Washington, D.C. 20036

Jonathan D. Blake
Ronald J. Krotoszynski, Jr.
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044-7566
Counsel for Association for Maximum
Service Television, Inc.

William R. Richardson, Jr.
Wilmer, Cutler & Pickering
2445 M St., N.W.
Washington, D.C. 20037
Counsel for Yes! Entertainment
Corporation
Counsel for Chris-Craft Industries, Inc./
United Television, Inc.

Richard J. Bodorff
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for En Technology Corporation

Wayne Luplow
Zenith Electronics Corporation
1000 Milwaukee Ave.
Glenview, IL 60025

Robert Mansbach
Joel Pearlman
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

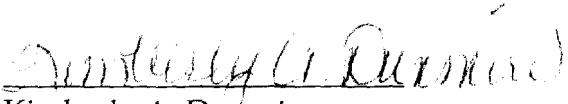
Peter Tannenwald
Irwin Campbell & Tannenwald, P.C.
1320 - 18th St., N.W.
Suite 400
Washington, D.C. 20036-1811
Counsel for Radio Telecom
& Technology, Inc.

Louis Martinez
President
Radio Telecom & Technology, Inc.
6951 Flight Rd., Suite 210
Riverside, CA 92504

Bruce D. Jacobs
Scott R. Flick
Kevin M. Walsh
Fisher Wayland Cooper Leader
& Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
Counsel for WavePhore, Inc.

Matthew J. McCoy
Staff Vice President
Government and Legal Affairs
George A. Hanover
Staff Vice President, Engineering
Consumer Electronics Group
Electronic Industries Association
2500 Wilson Blvd.
Arlington, VA 22201

Joseph P. Markoski
Jeffrey A. Campbell
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044
Counsel for Consumer Electronics Group
Electronic Industries Association


Kimberly A. Dunmire